

Appl. No. 10/815,717

**REMARKS/ARGUMENTS****Claim rejections- 35 USC 102**

Before setting forth a discussion of the prior art applied in the Office Action, it is respectfully submitted that controlling case law has frequently addressed rejections under 35 U.S.C. § 102. "For a prior art reference to anticipate in terms of 35 U.S.C. Section 102, every element of the claimed invention must be identically shown in a single reference." Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 677, 7 U.S.P.Q.2d 1315, 1317 (Fed. Cir. 1988; emphasis added). The disclosed elements must be arranged as in the claim under review. See Lindemann Machinefabrik v. American Hoist & Derrick Co., 730 F.2d 1452, 1458, 221 U.S.P.Q. 481, 485 (Fed. Cir. 1984). If any claim, element, or step is absent from the reference that is being relied upon, there is no anticipation. Kloster Speedsteel AB v. Crucible, Inc., 793 F.2d 1565, 230 U.S.P.Q. 81 (Fed. Cir. 1986; emphasis added). The following analysis of the present rejections is respectfully offered with guidance from the foregoing controlling case law decisions.

The Examiner rejects claims 1-8, 10-17, 19, 20, 24-28, 30-32 and 34 under 35 USC 102(e) as being anticipated by United States patent application no. 2004/0102215 ("Karr"). In response Applicant respectfully traverses Examiner's rejection for reasons detailed below.

Regarding claim 1, the Examiner contends that Karr teaches "a mobile station adapted to participate in wireless PMP (point to multipoint) communications using a cellular spectral resource, the mobile station being further adapted to participate in wireless P2P (peer to peer) communications using said cellular spectral resource" [emphasis added] in the Abstract, in paragraphs 0004, 0018-0019 and 0069, and in claim 1. However, none of the portions in Karr referred to by the Examiner teach or suggest that a mobile station can participate in both wireless PMP communications and wireless P2P communications using a cellular spectral resource.

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In paragraph 0006, Karr teaches that "the mobile device is configured to communicate in a peer to peer fashion by transmitting information to and receiving information from other mobile devices over a localcast communication link" and that "the mobile device transmits and receives information in a locally unused FM band" [emphasis added]. A "locally unused FM band" is not the same as a cellular spectral resource, and there is no suggestion anywhere in Karr of using a cellular spectral resource for the localcast communication. While it is true that Karr teaches that "the same mobile device may be operated as a stand-alone paging or messaging subscriber unit, or built into a mobile telephony device such as a cellular telephone", this still does not suggest using a cellular spectral resource for localcast communications.

As stated above, "for a prior art reference to anticipate in terms of 35 U.S.C. Section 102, every element of the claimed invention must be identically shown in a single reference". Since Karr does not teach PMP communications and P2P communications using a cellular spectral resource, Applicant submits that Karr does not teach "every element of the claimed invention". Therefore, Applicant submits that claim 1 of the present application is not anticipated by Karr.

Applicant submits that claims 2-8, 10-17, 19, 20 and 24 are not anticipated by Karr for at least their dependence upon claim 1. Furthermore, Applicant submits that the dependent claims recite additional features not found in Karr.

Regarding claim 2, the Examiner contends that Karr teaches "the mobile station being further adapted to participate in wireless P2P (peer to peer) communications using the PMP uplink band for both transmitting and receiving in a TDD (time division duplex) manner [emphasis added]" in paragraph 0071 and 0066. Applicant respectfully disagrees. The portions of Karr referred to by the Examiner are silent to time division duplexing. Paragraph 0066 discusses packet formats, which has nothing to do with time division duplexing. Paragraph 0071 recites "FM subcarrier modulation is employed to transmit the information over commercial FM stations". However, Applicant submits that FM subcarrier modulation is completely different than time division duplexing.

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Regarding claim 25, the Examiner contends that Karr teaches "determine when a pair of mobile stations which are communicating with each other are sufficiently close together for P2P communications; direct the pair of mobile stations to start communicating with each other using P2P communications" in paragraphs 0052 and 0073-0074. Applicant respectfully disagrees. Paragraph 0052 teaches an implementation of a localcaster in which "the localcast transmitter provides a local, one-way, data broadcast to one or more nearby mobile devices" and that "this broadcast can either replicate one or two on-air channels, provide one or two local-content channels, or a combination of the two". However, this is silent to directing a pair of mobile stations to start communicating with each other using P2P communications. Paragraph 0073 and 0074 relate to localcast and peer to peer modes. Paragraph 0073 teaches that "the local mode is divided into two modes, a localcast mode and a peer to peer mode". Further details of the modes are provided; however, no hint is given as to directing pair of mobile stations to start communicating with each other using P2P communications.

As stated above, "if any claim, element, or step is absent from the reference that is being relied upon, there is no anticipation". Since Karr does not teach directing a pair of mobile stations to start communicating with each other using P2P, Applicant submits that claim 25 recites elements that are absent from Karr. Therefore, Applicant submits that claim 25 of the present application is not anticipated by Karr.

Applicant submits that claims 26-28 are not anticipated by Karr for at least their dependence upon claim 25.

Regarding claim 30, the Examiner contends that Karr teaches "a mobile station participating in wireless PMP (point to multipoint) communications using a cellular spectral resource; the mobile station participating a wireless P2P (peer to peer) communication using said cellular spectral resource" [emphasis added] in the Abstract, in paragraphs 0004, 0018-0019 and 0069, and in claim 1. Applicant respectfully disagrees. As argued above in respect of independent claim 1, Karr does not teach wireless PMP communications and wireless P2P communications using the

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same cellular spectral resource. Therefore, for similar reasons provided above in respect of independent claim 1, Applicant submits that claim 30 is not anticipated by Karr.

Applicant submits that claims 30, 32 and 34 are not anticipated by Karr for at least their dependence upon claim 30.

The Examiner is respectfully requested to reconsider the rejection of claims 1-8, 10-17, 19, 20, 24-28, 30-32 and 34.

Claim rejections- 35 USC 103

The Examiner relies on Karr as disclosure for the independent claims and cites additional art to contend that claims 9, 33, 18, 21-23 and 29 are obvious. However, since Karr does not disclose the subject matter recited by the independent claims, Applicant respectfully submits that the Examiner's obviousness position is not well-founded.

In view of the arguments presented above in respect of the independent claims, Applicant respectfully requests the Examiner reconsider and withdraw the rejection of claims 9, 33, 18, 21-23 and 29.

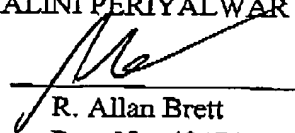
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As all of the Examiner's objections have been addressed by this response, favourable reconsideration is requested.

Respectfully submitted,

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